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**JUN 16 2005**

**OFFICE OF PETITIONS**

In re Application of  
Thong et al.  
Application No. 10/017,998  
Filed: December 13, 2001  
Attorney Docket No. 7163-033

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: **DECISION GRANTING PETITION**  
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This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)," filed August 19, 2004. Patentees request that the initial determination of patent term adjustment be corrected from three hundred and twenty six (326) to three hundred and fifty-one (351) days.

The application for patent term adjustment is **GRANTED**. The Office will adjust the PAIR calculation to reflect a determination of three hundred and fifty-one (351) days.

On June 23, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 326 days. On August 23, 2004, patentees timely<sup>1</sup> submitted an application for patent term adjustment (with required fee). Patentees dispute the reduction of 25 days attributed to applicants for failing to respond within three months to the Notice to File Missing Parts of Application mailed January 28, 2002. Patentees state that they timely responded to the Notice on March 14, 2002.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application file reveals that applicants' response to the Notice to File Missing Parts of Application mailed January 28, 2002 is of record in the application with a date of receipt by the Office of March 14, 2002. Moreover, the response is complete and proper. As this response was filed within the three-month period under 37 CFR § 1.704(b), there was no applicant delay for the submission of the response to missing parts.

Accordingly, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred and fifty-one (351) days. The Office notes that the Office failed to initially act upon the application within fourteen months of the filing date, a three hundred and fifty-four day (354) delay. See 37 CFR 1.702(a)(2). Applicants failed to reply to the

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<sup>1</sup> PALM records show that the Issue Fee payment was also received in the Office on September 21, 2004.

Office action dated February 2, 2004 until May 5, 2004, a three day delay. See 37 CFR 1.704(b).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

After the mailing of this Office action, the Office will forward such file to the Office of Patent Publications for a prompt issuance of the patent.

The Office apologizes for any delay in issuance of the patent and notes that application will receive additional PTA at the time of the issuance of the patent for failure to issue the application within four months of the payment of the issue fee and other requirements being satisfied. See 37 CFR 1.702(a)(4).

Telephone inquiries specific to this matter should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration at (571) 272-7757.

*Kery A. Fries*  
*for*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of DRAFT ~~Certificate of Correction~~ *Pat. determination*